

REMARKS/ARGUMENTS

This Amendment is responsive to the Office Action dated October 16, 2007. Claims 26-41 were pending in the application. In the Office Action, claims 26-41 were rejected. In the response, Claims 26 and 34 were amended. Claims 26-41 thus remain for consideration.

Applicant submits that claims 26-41 are in condition for allowance and requests withdrawal of the rejections in light of the following remarks.

A. Claim Rejection Under 35 U.S.C. § 103(a)

Claims 26-41 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 4,636,414 to Tajima et al. (hereafter "Tajima") in view of U.S. Patent No. 6,990,779 to Kiik et al. (hereafter "Kiik").

Applicant submits that independent claim 26 is patentable over Tajima and Kiik -- either taken alone or in combination.

Applicant's invention as recited in independent claim 26 is directed toward an impact resistant roofing shingle. New independent claim 26 discloses an impact resistant roofing shingle comprising: (1) a non-woven glass fiber substrate, (2) an asphalt coating having a first melting temperature, (3) a plurality of granules, (4) an organic film having high-impact resistance qualities and a second melting temperature and (5) **a rubber polymer modified asphaltic adhesive** having a third melting temperature (See Present Invention, ¶¶ [0040] and [0050]). Claim 26 further specifies that the third melting temperature is higher than the first melting temperature thereby allowing the modified asphaltic adhesive to prevent and seal cracks that may develop in the roofing shingle, and the second melting temperature is independent of

the first and third melting temperatures. (See Present Invention, ¶¶ [0050]-[0051]). (Emphasis added).

The Examiner admits that Tajima does not teach “a rubber polymer modified asphalt layer [that] is between the nonwoven glass fiber and the organic film.” To overcome this deficiency, Examiner relies on Kiik for the teaching that a coated substrate may be covered with preformed plastic films which can be attached to the coated substrate with an adhesive.

As disclosed in Kiik, the adhesive can be selected from the group consisting essentially of low density polyethylene, high density polyethylene, polyethylene-vinyl acetate, polypropylene, polyvinylidene chloride, nylon, polyester and mixtures thereof and, alternatively, an asphaltic adhesive, such as an asphaltic adhesive similar to standard laminating adhesives. (See Kiik, Col. 5, lines 50-55). **The asphaltic adhesive of Kiik, however, is merely a standard laminating adhesive and Kiik does not teach or suggest the addition of a rubber polymer to the adhesive so that a roofing shingle may have improved impact resistant properties.**

In contrast, the adhesive of the present invention is a rubber polymer modified asphalt adhesive. This rubber polymer modified asphalt adhesive includes rubbery-type polymers, such as styrene-butadiene-styrene (SBS), styrene-butadiene rubber (SBR), styrene-ethylene-butadiene-styrene (SEBS), styrene-isoprene-styrene (SIS) and the like. (See Present Invention, ¶[0040]).

And when the rubber polymer modified asphalt adhesive is used in combination with an asphalt coated substrate, the rubber polymer modified asphalt adhesive instills improved impact resistant properties (i.e., prevents and seals cracks in a hung shingle) upon the asphalt coated substrate. (See Present Invention, ¶[0040]). This combination is clearly distinguished from the combination of Kiik which merely includes an asphalt coated substrate and a standard laminating

adhesive which does not instill improved impact resistant properties upon a roofing shingle.

(See Present Invention, ¶[0040]).

Additionally, the rubber polymer modified asphalt adhesive assures that the bonding of the organic film to the asphalt coated substrate is independent of the melting point of the organic film which in turn gives the present invention the freedom to employ any organic film useful in the manufacture of impact resistant roofing shingles. (See Present Invention, ¶[0050]).

Since Tajima and Kiik do not disclose a shingle that has a rubber polymer modified asphaltic adhesive, Applicants believe that independent claim 26 is patentable over Tajima and Kiik -- either taken alone or in combination -- on at least the above basis.

Claims 27-41 depend on claim 26. Since claim 26 is believed to be patentable over Tajima and Kiik, claims 27-41 are believed to be patentable over Tajima and Kiik on the basis of their dependency on claim 26.

Reconsideration and withdrawal of the present rejection is respectfully requested.

CONCLUSION

In view of the aforementioned remarks and amendments, the Applicants believe that each of the pending claims is in condition for allowance. If, upon receipt and review of this amendment, the Examiner believes that the present application is not in condition for allowance and that changes can be suggested which would place the claims in allowable form, the Examiner is respectfully requested to contact Applicants' undersigned counsel at the number provided below.

The Director is hereby authorized to charge any fees that may be associated with this filing or credit any overpayment of same, to Deposit Account No. 03-1250, Reference No. FDN-2824, Customer No. 43,309.

Respectfully submitted,

Date: December 6, 2007

/Barry J. Marenberg/
Barry J. Marenberg
Reg. No. 40,715

Sills Cummis Epstein & Gross P.C.
One Riverfront Plaza
Newark, New Jersey 07102-5400
Telephone: 937 643.7000
Facsimile: 937 643.6500